

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

**June 25, 2020 at 10:00 a.m.**

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| 1. <a href="#">15-29541-E-12</a><br><a href="#">MHM-1</a> | TIMOTHY WILSON<br>Mark Wolff | FINAL CONTINUED HEARING RE:<br>MOTION TO DISMISS CASE<br>1-17-20 [ <a href="#">148</a> ] |
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, and Office of the United States Trustee on January 17, 2020. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is denied.**

The Chapter 12 Trustee, Michael H. Meyer (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Timothy Wilson (“Debtor”), has caused unreasonable delay that is prejudicial to creditors. [11 U.S.C. § 1208(c)(1)]
2. Debtor is in material default with respect to the terms of a confirmed plan. [11 U.S.C. § 1208(c)(6)]

## **TRUSTEE'S DECLARATION**

In support of the Motion, Trustee filed a Declaration, Dckt. 150, stating:

1. This Motion is sought on grounds of unreasonable delay pursuant to 11 U.S.C. § 1208(c)(1) and 11 U.S.C. § 1208(c)(6), material default with respect to the terms of a confirmed plan.
2. As of January 17, 2020 Debtor is delinquent in the sum of \$40,600.00, not including the \$4,300.00 payment which will be due February 25, 2020.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 11, 2020. Dckt. 152.

- A. Debtor asserts he has completed four (4) years of his five (5) year Chapter 12 Plan.
- B. Debtor's Plan provides for an annual lump sum payment in the amount of \$36,000.00, this payment stems from his timber harvest in December each year. Debtor has not paid the lump sum payment due in December 2019.
- C. Debtor currently has receivables in excess of \$40,000.00 resulting from the timber harvest but he has been unable to collect this receivable because the buyer has not been able to complete their job due to weather. This job may not be completed until the rainy season has subsided, Debtor speculates this will be on or around April or May.
- D. Debtor has continued to make regular monthly payments due under his Plan.
- E. Debtor is currently working to modify his Plan to push the lump sum payment to a later date. Debtor is also considering selling real property in the spring or summer and has communicated with a real estate agent to make the lump sum payment.
- F. Further, Debtor provides another possible solution with him making the lump sum payment in December 2020 after the timber harvest.
- G. Debtor requests te court give him additional time to make the lump sum payment. Debtor is working on modifying the Chapter 12 Plan. But two uncertainties prevent him from doing so: (1) timing as to the sale of the property and (2) whether he will be able to collect the receivables owed to him.

## Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

- A. “Unreasonable delay by the debtor that is prejudicial to creditors.”
- B. “Material default by the debtor with respect to the terms of a confirmed plan...*as fully set forth in the declaration of Michael H. Meyer.*” (Emphasis added).

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that his Declaration is “really” the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The rules do not provide for a declaration to serve as the “motion” to state the grounds with particularity upon which the relief is requested. The declaration provides the evidence in support of the grounds as stated with particularity in the motion.

The Debtor/Plan Administrator agreed to proceed with the current objection in light of the monetary default, which Debtor/Plan Administrator states he is taking action to address.

## Continuance for Further Action and Review

At the hearing, the Debtor/Plan Administrator recognized the defaults and stated several potential remedies, including amendment of the plan. The Debtor/Plan Administrator requested a continuance to allow for time to undertake such remedies.

At the hearing, the Debtor stated the following Amendments that will be stated in the order confirming:

- A.
  - 1. July 2020 pay \$20,000
  - 2. August 2020 \$52,533.66
  - 3. September - December 2020, \$10,000 a month
- B. Amount to be paid to the general unsecured, \$17,027.70, pro rata for the general unsecured
- C. Monthly Dividend to Wright

1. \$1,463.67, beginning with July 2020, continuing through December 2020

a. Wright says that they are owed \$8,000 from December 2020

### **Debtor's Motion to Confirm Plan**

On April 7, 2020, Debtor filed a Motion to Confirm a Modified Chapter 12 Plan. Dckt. 156. The Motion has been set for hearing on May 21, 2020 at 10:30 a.m.

### **Confirmed Chapter 12 Plan**

On June 5, 2020, the court confirmed Debtor's First Modified Chapter 12 Plan filed on April 7, 2020. Dckt. 177.

Based on the foregoing, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 12 Case filed by the Chapter 12 Trustee, Michael Meyer ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied.